

Prosperity Through Timeless Values

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A FAMILY FRIENDLY SMALL BUSINESS NIGHTMARE

The Family Medical Leave Act of 1993 was inspired by the desire to help mothers manage working and family emergencies. Like many well-intentioned laws, the FMLA has been plagued by unintended consequences and expensive abuses, especially costly for small businesses. Like many bureaucratic programs, it has been abused by people who are savvy enough to scam the rules. Free negotiation by workers and firms potentially could provide a superior solution to the problems the FMLA was supposed to solve.

The rationale for the FMLA was to provide job security protection for working mothers. Women want to take care of their newborns without fear that their jobs will be gone after a maternity leave. Women who spent years obtaining academic credentials understandably fear losing jobs that are not easily replaced. But, like many politically driven projects, the FMLA had to cover enough people in different situations to build a political coalition large enough to vote for it. The Act calls itself “family leave” and insists that it be available for “compelling family reasons on a gender-neutral basis.”

The Act provides leave not only for maternity or the care of a new born, but also for care for a dependent with a serious illness. Unfortunately, the Department of Labor has issued conflicting opinions on what constitutes a serious illness. While the legislative history clearly indicates that the leave was not supposed to be used for minor sniffles, employ-

ees have obtained certification for minor conditions such as allergies, migraines, or back problems.

Compounding the problem, the FMLA allows for intermittent leave: that is, people can take leave in “separate blocks of time due to a single qualifying reason.” According to the Small Business Administration, intermittent leave is the most challenging part of the FMLA for small businesses. The regulations require that leave increments have to be awarded in the “shortest period of time the employer’s payroll system uses to account for absences or use for leave, provided it is one hour or less.”

Some small manufacturing businesses track time in increments as short as six minutes. The Employment Policy Foundation found that 50 percent of leave-takers provide notice either the day the leave begins or the day after. The administrative and scheduling challenges this presents are a nightmare. And the program hurts overall employee morale, when other employees have to do the work of the absent employees.

Strong families are essential to the moral and economic health of society, and family-friendly work rules are a praiseworthy goal. One might argue that legislation is necessary because no company would bother providing these kinds of benefits. They would be better off doing as little as possible to accommodate their employees, offering a wage/hours package and telling them to take it or leave it.

But competition is a funny thing. If one company

doesn't offer benefits that workers want, another company will. If enough families demand flexibility, companies will have to start offering it.

Let's do some math. According to the Employment Policy Foundation, the FMLA cost employers over \$21 billion in 2004 due to lost productivity from absenteeism, continued health benefits and net labor replacement costs. Roughly \$6.3 billion per year of those costs were borne by the 200,000 small businesses covered by the Act. That amounts to \$31,500 per company per year. That's a lot of money those companies could be spending on benefits that would actually benefit the employees.

Small businesses want to retain skilled and dedicated employees without giving slackers an opening to abuse the company's good will. When problems arise, the firm and its employees can work out issues together. By contrast, when problems arise with federal legislation, there cannot be a carefully tailored, personalized response. The abuses and unforeseen consequences of the FMLA have to be dealt with by the federal government: litigation to determine the exact requirements of the law; further regulation to change the law; and a complex process of fact-finding in between.

Small competitive firms need not limit their scope to providing generic "family leave." Firms try to create a menu of ways to tailor policies to the specific needs employee needs. Firms would try various combinations of leave policies, job sharing, flex-time and telecommuting. Companies might try one approach for new mothers, something different for people with elderly parents, and something still different for people with minor chronic illnesses—assuming the law would allow you to "discriminate" in this way. But as things now stand, the government has preempted a lot of experimentation with programs that might possibly be better for the workers and cheaper for the companies.

Flexibility is an important competitive advantage to smaller firms in recruiting and retaining qualified employees. These rigid Department of Labor regulations are exactly the opposite of what the workers and employers need. It is time to revamp the Family Medical Leave Act.

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